



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

OCT - 6 2004

Leonard Mallet
Vice President, Operations
Texas Eastern Products Pipeline Company
2929 Allen Parkway
Houston, Texas 77019

RE: CPF No. 4-2004-5023

Dear Mr. Mallet:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes findings of violation and assesses a civil penalty of \$5,000. It further finds that you have completed the actions specified in the Notice required to comply with the pipeline safety regulations. When the civil penalty is paid, this enforcement action will be closed. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. §190.5.

Sincerely,

James Reynolds
Pipeline Compliance Registry
Office of Pipeline Safety

Enclosure

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)
)
Texas Eastern Products)
Pipeline Company)
)
Respondent.)
)

CPF No. 4-2004-5023

FINAL ORDER

On March 24 - 28, April 15 - 16 and May 29, 2003, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), conducted an on-site pipeline safety inspection of Respondent's facilities and records in Texas and Louisiana. As a result of the inspection, the Director, Southwest Region, OPS, issued to Respondent, by letter dated June 1, 2004, a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. §§ 195.573 and 195.402 and proposed assessing a civil penalty of \$5,000 for the alleged violation of §195.573. The Notice also proposed that Respondent take certain measures to correct the alleged violations.

Respondent responded to the Notice by letter dated July 27, 2004 (Response). Respondent contested the second allegation of violation and it provided information concerning the corrective actions it has taken. Respondent did not request a hearing, and therefore has waived its right to one.

FINDINGS OF VIOLATION

In its Response, Respondent did not contest the alleged violation of 49 C.F.R. § 195.573 for failing to correct an identified deficiency in corrosion control as required by § 195.401(b). Accordingly, I find that Respondent violated § 195.573 of 49 C.F.R. Part 195, as more fully described in the Notice.

Item 2 in the Notice alleged that Respondent had violated 49 C.F.R. § 195.402 for failing to prepare and follow a manual of written procedures for conducting normal operations and maintenance activities. The Notice specifically alleged that several cracks on the concrete ring under tanks 309 and 310 were observed by the OPS inspector. After a review of Form 3323 Tank Inspection Reports, the inspector noted that the report indicated the tank foundation conditions to be "Good" for both tanks. Respondent's procedure states that tanks shall be visually inspected externally at intervals not

to exceed 1 month, with results placed on Form 3323. Based on the procedural requirement, the OPS inspector concluded that Respondent's employees were not documenting the concerns with the tanks' foundations.

Respondent disagreed with OPS' conclusion. Respondent asserted in its Response that it did an internal investigation and concluded that the cracks were cosmetic in nature. Based on this understanding, its personnel rated the ring wall condition as "Good."

OPS has met its burden by observing a condition that was not noted on the appropriate form. The burden then shifted to Respondent to disprove the allegation. Respondent merely asserted that it had done an investigation of the cracks and assessed that they were merely cosmetic. However, Respondent provided no evidence of such investigation. Therefore, Respondent did not meet its burden of proof. Accordingly, I find that Respondent violated §195.402 by failing to follow its procedures.

These findings of violation will be considered prior offenses in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$100,000 per violation for each day of the violation up to a maximum of \$1,000,000 for any related series of violations.

49 U.S.C. § 60122 and 49 C.F.R. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed a total civil penalty of \$5,000 for violation of §195.573.

Respondent concurred with the \$5,000 penalty assessment. Respondent presented no justification for a reduction in the amount of the penalty.

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a total civil penalty of \$5,000.

Payment of the civil penalty must be made within 20 days of service. Payment may be made by sending a certified check or money order (containing the CPF Number for this case) payable to "U.S. Department of Transportation" to the Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division (AMZ-120), P.O. Box 25082, Oklahoma City, OK 73125.

Federal regulations (49 C.F.R. § 89.21(b)(3)) also permit this payment to be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions are contained in the enclosure. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125; (405) 954-8893.

Failure to pay the \$5,000 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in a United States District Court.

COMPLIANCE ORDER

The Notice proposed a compliance order with respect to items 1 and 2 in the Notice for violations of §§ 195.573 and 195.402. Under 49 U.S.C. § 60118(a), each person who engages in the transportation of hazardous liquids or who owns or operates a pipeline facility is required to comply with the applicable safety standards established under chapter 601. The Regional Director has indicated that Respondent has taken the following actions specified in the proposed compliance order:

1. Respondent provided information that adequately demonstrates that its 8 inch and 10 inch P-22 and P-222 pipeline segments are in compliance with 49 CFR § 195.573(a).
2. Respondent provided a revised Storage Tanks procedure that addressed deficiencies found during inspections and scheduling of remedial actions. Respondent also stated the mechanisms put in place to assure that its personnel will be knowledgeable with the changes in the procedure.
3. Respondent provided tank evaluation reports that evaluated the foundation and any subsequent settlement of the two breakout tanks. The report demonstrated that both tanks were within the allowable limits.

Accordingly, since compliance has been achieved with respect to these violations, the compliance terms are not included in this Order.

Under 49 C.F.R. § 190.215, Respondent has a right to submit a Petition for Reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically

stays the payment of any civil penalty assessed. However if Respondent submits payment for the civil penalty, the Final Order becomes the final administrative decision and the right to petition for reconsideration is waived. The terms and conditions of this Final Order are effective on receipt.

William H. Guts
for

Stacey Gerard
Associate Administrator
for Pipeline Safety

OCT - 6 2004

Date Issued